HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G.V. SEETHAPATHY

Writ Appeal No.719 of 2006

Between:

Indira Seva Sadan Welfare Association,
rep. by its President, Hyderabad. … Appellant

And

Indira Seva Sadan Society,
rep. by its Secretary (presently known as
Sangam Lakshmibai Vidyapeet) & others. … Respondents

:: JUDGMENT ::

Counsel for the Appellant : Sri Panduranga Rao Kulkarni

Counsel for Respondent No.1 : Sri D. Prakash Reddy, Senior Advocate assisted by Sri S. Niranjan Reddy.

Counsel for Respondent Nos.2 & 3 : Government Pleader for Endowments.

29th June, 2006

Per G.S.Singhvi, C.J.

This appeal is directed against order dated 24-8-2005 passed by the learned Single Judge in Writ Petition No.15535 of 2005 whereby, without going into the merits of the challenge thrown by respondent No.1 to orders dated 24-6-2002 and 25-5-2005 passed by Deputy Commissioner, Endowments Department, Hyderabad (respondent No.3 herein) and the Regional Joint Commissioner, Endowments Department (respondent No.2 herein) respectively, the learned Single Judge made interim order dated 19-7-2005 absolute and, at the same time, directed Deputy Commissioner of Endowments, Hyderabad to finally dispose of O.A.No.103 of 2001 within a

period of three months from the date of receipt of a copy of this court's order.

Learned counsel for the parties agree that O.A.No.103 of 2001 pending before respondent No.3 has not been disposed of so far. According to Sri D.Prakash Reddy, Senior Advocate appearing for respondent No.1, final adjudication of the O.A. had to be deferred on account of interim order passed by this Court in Writ Petition No. 12590 of 2006.

In view of the above, the only issue which requires consideration in this appeal is whether the learned Single Judge committed an error by ordering continuance of ad interim order dated 19-7-2005 without going into the legality and correctness of the orders impugned in the writ petition.

The parameters for exercise of jurisdiction under Article 226 of the Constitution of India in petitions involving challenge to an order made by quasi-judicial or judicial authority or an award made by the tribunal are well defined. The High Court can issue a writ of certiorari if it is convinced that the order/award under challenge is without jurisdiction or is vitiated due to violation of rules of natural justice or s uffers from an error of law apparent on the face of the record. A writ of certiorari can also be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/factors. However, a writ court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ court cannot go into sufficiency and adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion.

I n **Syed Yakoob v. K.S. Radhakrishnan**[1] the Supreme Court considered the scope of the High Courts' power to issue a writ of certiorari and held as under:

> i) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are

cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

ii) The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

iii) A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[2] their Lordships of the Supreme Court, while dealing with the scope of High Court's power under Article 226 to re-appreciate the evidence produced before the trial Judge, held as under:

"Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High

Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

In **Jitendra Singh Rathor v. Shri Baidyanath Ayurved Bhawan Ltd.**[3] the Supreme Court considered the question whether in exercise of power und Article 227, the High Court can interfere with the discretion exercised by tl Tribunal under Section 11-A of the Act and observed :

"Under Section 11-A wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The High Court under Article 227 of the Constitution does not enjoy such power though as a superior Court, it is vested with the right of superintendence. It is entitled to scrutinize the orders of the subordinate tribunals within the well-accepted limitations and, therefore, it can in an appropriate case quash the award of the Tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. But it is not entitled to exercise the powers of the Tribunal and substitute an award in place of the one made by the Tribunal or substitute one finding for another and similarly one punishment for another, as in the case of an appeal where it lies to it."

In **R.S. Saini v. State of Punjab and others**[4] the Supreme Court upheld the order passed by the High Court dismissing the writ petition filed against the order of the petitioner's removal from the office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing read as under:

"The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

The proposition laid down in **Sayed Yakoob[1] (supra)** has been reiterated in a recent judgment in **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ Varanasi & ors.**[5]

In **Surya Dev Rai v. Ram Chander Rai**[6]**,** the Supreme Court noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

> i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.
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> ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.
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> iii) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of

supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

iv) The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.

Having noted the relevant principles which governs the exercise of High Court's power of judicial review, we may now advert to the order under challenge, a perusal of which reveals that after noticing the facts leading to the filing of I.A.No.24 of 2002 by Indira Seva Sadan Welfare Association i.e., the appellant, the contents of order dated 24-6-2002 passed by respondent No.3 and order dated 25-5-2005 passed by respondent No.2, the learned Single Judge disposed of the writ petition by simply observing that interim order passed by the Court on 19-7-2005 directing the tenants to continue to pay their respective rents to Sangam LakshmiBai Vidyapeeth known as Indira Seva Sadan shall continue.

In our considered opinion, without going into the legality of the orders passed by respondent Nos. 3 and 2 and without recording a specific finding

that the authorities concerned had committed a jurisdictional mistake in entertaining I.A.No. 24 of 2002 filed by the appellant, or that the direction given by the Deputy Commissioner suffers from a patent legal infirmity, the learned Single Judge could not have indirectly nullified those orders by directing that interim order dated 19-7-2005 shall continue till the disposal of O.A.No.103 of 2001. It must be remembered that in exercise of the power vested in it under Article 226 of the Constitution of India, the High Court cannot arrogate to itself jurisdiction akin to the one available to the Supreme Court under Article 142 of the Constitution of India to pass appropriate order as may be considered necessary for doing complete justice in any cause or matter pending before it. In cases involving challenge to orders/awards passed by judicial and quasi-judicial bodies and authorities, the High Court is duty bound to examine the legality and correctness of the proceedings or order under challenge and pass appropriate order by assigning cogent reasons. Without recording a specific finding that the order/award under challenge suffers from a jurisdictional infirmity or an error of law apparent on the face of the record or that there has been a violation of the rules of natural justice, the High Court cannot nullify the impugned order/award or its effect.

In the premise aforesaid, we allow the appeal and set aside the order of the learned Single Judge. Writ Petition No.15535 of 2005 shall now be listed before an appropriate Single Bench for fresh adjudication.

The Registry is directed to list the case before the Single Bench on July 10, 2006. In the meanwhile, the appellant shall continue to deposit rent in accordance with the directions given by respondent No.3 vide his order dated 24-6-2002. Needless to say that this direction would remain subject to final adjudication of the writ petition.

G.S.SINGHVI, C.J.

29th June, 2006

G.V.SEETHAPATHY, J.

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[1] AIR 1964 SC 477

[2] AIR 1970 SC 61

[3] (1984) 3 Supreme Court Cases 5

[4] JT 1999 (6) SC 507 = (1999) 8 SCC 90

[5] JT 2002 (8) SC 69 = (2002) 9 SCC 375

[6] AIR 2003 SC 3044